

MAR 02 2006

LaHaye v. Goodneuz Group
No. 04-55839

CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS

RYMER, Circuit Judge, dissenting:

I do not see the same triable issues of fact in the record, and would affirm. The agreement states that it is integrated, LaHaye so testified, and there were no pre-agreement representations upon which LaHaye relied. The district court so found in findings that are final, after considering parol evidence. There is no evidence that LaHaye ever asked for negotiations on standard terms and conditions; such requests as were made would have added new and different obligations, therefore Paragraph 18 was never triggered. LaHaye waived the “video-first” theory upon which he now argues that his claim for breach of the covenant of good faith and fair dealing should go forward by not raising it in the district court in the summary judgment proceeding. In any event, it can go nowhere because the contract explicitly conveys *all* distribution rights to Namesake. And there is no evidence that selecting the videocassette format was objectively unreasonable or in bad faith.